



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

February 21, 2012

Stephen W. Preston  
Designated Agency Ethics Official  
Central Intelligence Agency  
OGC/ALD/Ethics  
Washington, DC 20505

Dear Mr. Preston:

The United States Office of Government Ethics (OGE) recently conducted a follow-up review of the ethics program at the Central Intelligence Agency (CIA) to determine whether the improvements recommended or suggested in our May 2011 report have been achieved. Below are the results of our follow-up review.

### **Program Administration**

OGE's initial review of the CIA's ethics program identified a number of deficiencies which were at least partially the result of the way the ethics program was structured and staffed. OGE discussed its concerns with CIA's Alternate Designated Agency Ethics Official at the end of the on-site portion of the initial review. The CIA took immediate action to strengthen the ethics program by creating the Ethics Law Division (ELD) within the CIA's Office of General Counsel. ELD, as described in the CIA's comments on the draft report of the initial review, was created with a structure designed to raise the ethics program's profile within the agency and a staff dedicated to ethics program responsibilities. Even though ELD was established by the time the report on the initial review was issued, OGE recommended in its report that:

...the CIA continue implementing its planned changes as quickly as possible to improve ethics-related services provided to employees and ensure compliance with relevant requirements.

During the follow-up review, OGE learned that ELD plans to further enhance the ethics program's structure by adding a deputy position to assist the Chief, ELD. It was also learned that the Ethics Program Manager position would become vacant by the end of January, 2012. OGE is gratified that the CIA has improved the structure and staffing of its ethics program and continues to seek improvement through the creation of the deputy position. However, OGE strongly encourages the CIA to fill both the deputy and Ethics Program Manager positions as quickly as possible. In particular, the Ethics Program Manager position is a critical link in the program that bridges the disciplines of subject matter expertise and the actual administration of the ethics program. Filling the deputy position will also allow the Chief, ELD, to concentrate on the substantive issues still facing the CIA's ethics program. OGE finds that the new structure and increased staff of the CIA's ethics program appear to have vastly improved the CIA's ability to meet regulatory requirements and provide appropriate ethics-related services to its workforce.

Therefore, the recommendation regarding the structure and staffing of the CIA's ethics program is closed.

OGE would also like to note Director Petraeus' December 7, 2011, statement to CIA employees regarding their responsibility to be aware of the ethics-related rules and seek advice when necessary. His comment that he expects supervisors and managers to lead by example in maintaining high ethical standards reflects precisely the message OGE encourages agencies to convey.

### **Financial Disclosure**

OGE's initial review found significant deficiencies in both the public and confidential financial disclosure systems administered by CIA. OGE's examination of public and confidential financial disclosure reports indicated that the review of reports was inadequate. The initial review also found that CIA's process for identifying confidential filers was not reliable and that there was no system at all for identifying new entrant confidential filers who entered covered positions outside of the annual filing cycle. Further, the written procedures CIA provided during the initial review were out of date. OGE recommended that the CIA:

- Develop procedures--other than self-identification--that reliably identify confidential financial disclosure report filers, including new entrant and annual filers.
- Develop procedures to ensure all reports are timely filed, reviewed and certified.
- Draft new procedures for the administration of the public and confidential financial disclosure systems that address all required elements and accurately reflect the revamped processes for financial disclosure that have been put in place.

CIA has not developed written procedures which adequately address the requirements of these recommendations. During the follow-up review, CIA ethics officials stated that they had planned to wait until after an anticipated electronic financial disclosure system was implemented to draft a new financial disclosure "regulation." The regulation would then require the approval of other agency components before it could be enforced. Ethics officials did note that an "Agency Notice" had been issued providing instructions to annual confidential financial disclosure report filers in advance of the 2012 confidential annual filing cycle and that a similar notice would be issued to public filers prior to the public annual filing cycle. While providing some insight into the administration of the confidential financial disclosure system, the Agency Notice regarding the confidential financial disclosure system does not meet the requirements for having written procedures.

CIA does appear to have effective procedures for new entrant filers who are hired to perform acquisition duties. Ethics officials are given a list of all new hires and provide them with a notice containing specific language regarding the filing requirements for acquisition officials. In addition, the office overseeing acquisitions is well aware of the filing requirements and how they apply to acquisition officials.

Written procedures governing the public and confidential financial disclosure systems are required by statute and regulation. The written procedures contemplated by statute and regulation do not have to be formally adopted agency regulations. Rather, they should be more in the nature of standard operating procedures which fully describe the process and procedures the agency currently uses to ensure that all reports are filed, reviewed, and certified in accordance with applicable requirements. CIA agreed to begin drafting the required procedures. OGE will leave the recommendations regarding financial disclosure open until CIA has taken the appropriate actions.

The CIA's alternative financial disclosure system requires that covered employees determine who the interested private sector parties are in each contracting or procurement action they are assigned to work on and certify that they have no conflicts of interest. OGE's report included the following suggestion:

OGE suggests that CIA ethics officials periodically review samples of self-certification forms to ensure that they identify all interested private sector parties involved in contracting and procurement actions. This review is analogous to conducting the required review of public and confidential financial disclosure reports and a basic management practice that should be incorporated into any ethics program that has a similar alternative system.

While ethics officials have taken steps to ensure that all forms are filed, they had not established a plan to review those forms to verify that all private sector parties were identified. Based on discussions during the follow-up review, ethics officials are considering implementing such a plan. CIA is free to determine whether or not it is necessary to conduct internal review of the certification forms. The issue of CIA's internal review of the forms is closed. However, OGE, as noted in its initial report, will examine the self-certification system in its next follow-up review.

### **Education and Training**

OGE's initial review also found that CIA's manual process for tracking the completion of annual ethics training was an impairment to the ethics program because of the number of filers involved. OGE's recommended that:

CIA must implement a more efficient tracking system that allows ethics officials to timely and continually monitor completion of annual ethics training.

Ethics officials have taken no action on this recommendation. Their intention is to build a tracking system into whichever electronic financial disclosure system is eventually adopted. OGE has seen this approach at other agencies and is aware of the efficiencies that this type of dual system can provide. OGE will leave its recommendation regarding the tracking system open until there is reasonable assurance that the system CIA implements can efficiently track completion of annual ethics training.

### **Advice & Counsel**

OGE's initial review report noted that the CIA has no written procedures for administering the advice and counsel element of its ethics program. Given the advantages to having written procedures even though not required as in the case of public and confidential financial disclosure, OGE's report included the following:

OGE suggests that CIA develop written procedures for the administration of the ethics program. These procedures should, at a minimum, address who is authorized to provide ethics-related advice, how employees will be made aware of the availability of ethics officials to provide advice, when advice must be provided in writing, and how advice will be shared and retained.

During the follow-up review, ethics officials indicated the development of written procedures was pending the issuance of revised internal regulations. As with the recommendations regarding written procedures for financial disclosure systems, OGE encourages CIA to create written procedures as soon as possible, even if they are in the form of informal guidance. This matter is within the discretion of CIA and therefore, OGE has closed this issue.

### **Agency-Specific Ethics Rules**

OGE's initial report noted that all CIA employees were required to obtain prior approval to engage in any outside activity. The basis for the requirement was the need to maintain security. However, the prior approval system also included a requirement that each request be approved by an ethics official who reviews the outside activity for conflicts of interest. While acknowledging that the Intelligence Authorization Act for Fiscal Year 2010 required that the Director of National Intelligence (DNI) issue regulations regarding outside employment for an officer or employee of an element of the intelligence community, OGE recommended that CIA:

Draft supplemental regulations to address the outside activities approval process as it relates to the requirement to receive approval from ethics officials subsequent to a conflict of interest analysis.

During the follow-up review, ethics officials stated that they had not begun drafting supplemental procedures. They were concerned that anything they might draft could conflict with what the DNI proposes. OGE will leave this recommendation open and continue to consult and coordinate with CIA until the issue is resolved.

### **Enforcement**

OGE's initial review found that CIA ethics officials may not have been aware of when referrals were made by the Inspector General to the Department of Justice regarding potential violations of the criminal conflict of interest statutes. OGE suggested that ethics officials:

Coordinate with IG officials to ensure OGE is concurrently notified when referrals to the Department of Justice regarding potential violations of the criminal conflict of interest statutes are made.

CIA's 60-day response confirmed that ethics officials coordinated with the IG's office to ensure notification to both OGE and ethics officials. Based on the fact that ethics officials were familiar with the referrals OGE has received from CIA's IG since the review, it appears that coordination has been successful. Ethics officials also stated that the relationship with the IG's office has been strengthened since the review. CIA's actions were responsive to the suggestion and OGE has closed this issue.

### **1353 Travel Acceptances**

OGE's report also noted that CIA has a limited history of accepting travel payments from non-Federal sources for travel, subsistence, and related expenses under the authority of 31 USC § 1353. However, CIA's procedures for accepting payments under this authority were outdated. OGE's report included the following:

While OGE found written procedures in place to accept travel payments from non-Federal sources, it was noted that updates had not been made to them since January 21, 2003. Despite the infrequency of CIA employees accepting travel payment from non-Federal sources, the agency's written procedures should reflect the most up-to-date GSA changes made to 41 C.F.R. part 304-1. Accordingly, OGE suggests that these procedures be evaluated and revised, as appropriate, to remain current with regulatory policy and/or agency procedural practices.

Ethics officials have made the appropriate updates and are coordinating with other components of the agency to ensure the updated procedures are fully implemented. OGE considers these actions to be responsive to the suggestion and the issue has been closed.

### **Special Issues**

OGE's initial review found that individuals hired under personal services contracts were required to sign forms which indicated they were subject to the criminal conflict of interest statutes. OGE's report included the following:

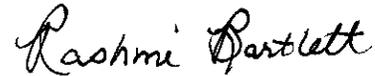
OGE recommends that the CIA cease including references to chapter 11 of title 18 and the criminal conflict of interest statutes in documents independent contractors are required to sign.

Ethics officials confirmed that the references were removed. An examination of documentation also found that the references had been removed. OGE has closed this recommendation.

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Based on our follow-up and as noted, we have determined that some of the recommendations in OGE's report are to remain open pending further action by CIA. OGE will conduct further follow-up reviews after CIA has had the opportunity to complete these actions. OGE has considered CIA's actions regarding the suggestions in the May 2011 report and considers those issues closed. Thank you for your assistance during the follow-up process. Please contact me at 202-482-9317 if you require any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Rashmi Bartlett".

Rashmi Bartlett  
Associate Director